

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

IN RE: GUTTA, Srinivas)	
)	APPEAL NO. _____
SERIAL NO: 10/596,165)	
)	
FOR: COLLABORATIVE SAMPLING FOR IMPLICIT RECOMMENDERS)	
)	BRIEF ON APPEAL
FILED: June 2, 2006)	
)	
GROUP ART UNIT: 2169)	
)	
ATTORNEY DOCKET NO: P08655US01)	
 CONF NO.: 3089		

To the Commissioner of Patents and Trademarks
Mail Code Appeal Brief - Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Dear Sirs:

Please enter the following Brief on Appeal into the record.

CERTIFICATE OF MAILING/TRANSMISSION

I hereby certify that this correspondence is, on the date shown below, being:

EXPRESS MAILING

☐ deposited with the United States Postal Service with sufficient postage as Express mail in an envelope addressed to the Commissioner for Patents, Mail Stop Appeal Brief – Patents P.O. Box 1450, Alexandria, VA 22313-1450 Express Label No. _____

ELECTRONIC

☒ transmitted by electronic to the Patent and Trademark Office, using the EFS

Date: _____

Aug 31, 2010



EDMUND J. SEASE

TABLE OF CONTENTS

I.	REAL PARTY IN INTEREST	1
II.	RELATED APPEALS AND INTERFERENCES	1
III.	STATUS OF CLAIMS	1
IV.	STATUS OF AMENDMENTS	1
V.	SUMMARY OF CLAIMED SUBJECT MATTER	1
A.	Rationale for the invention.....	1
B.	Explanation of subject matter defined in each independent claim with reference to specification page and line number.....	2
VI.	GROUND OF REJECTION TO BE REVIEWED ON APPEAL.....	3
VII.	ARGUMENT	3
1.	The Examiner's broadest construction rubric cannot be used to "make up" for lack of teachings in the art.....	3
2.	The requirements for a <i>prima facie</i> case of anticipation.....	4
3.	Schaffer which is commonly owned has NOTHING to do with the claimed invention.....	5
4.	The specifics of Schaffer's deficiencies are numerous.....	5
VIII.	CONCLUSION	7
IX.	APPENDIX - Claims	9
X.	EVIDENCE APPENDIX.....	12
XI.	RELATED PROCEEDING APPENDIX	13

I. REAL PARTY IN INTEREST

Pace Micro Technology PLC., Victoria Road, Saltaire, Shipley, West Yorkshire,
United Kingdom BD18 3LF.

II. RELATED APPEALS AND INTERFERENCES

None.

III. STATUS OF CLAIMS

Claims 1-4 and 6-15 are pending in the application. Claims 5 and 16-23 were withdrawn from consideration as relating to a non-elected invention. The only independent claim for consideration in this appeal is claim 1.

IV. STATUS OF AMENDMENTS

An Amendment After Final Rejection dated June 22, 2010, with a proposed minor amendment to claim 1 was refused entry as raising new issues. The claims therefore stand as amended in the November 23, 2009 amendment.

V. SUMMARY OF CLAIMED SUBJECT MATTER

A. Rationale for the invention

The substance of this invention relates to collaborative sampling for television recommender systems (see Title and page 1 lines 1-2). It relies not only the viewer's likes

and dislikes, but others who share similar profiles, either in terms of geographic location or likes and dislikes. And, the others are selected from both positive sampling (those who like the same things) or from negative sampling (those who dislike and don't watch the same things). (4/12-13). It is this collaborative sampling for recommendation of the viewer's own television program recommender that is the essence of the invention, and the essence of the distinguishing feature of the invention from the prior art, as explained below.

B. Explanation of subject matter defined in each independent claim with reference to specification page and line number.

Claim 1. A method for generating a recommendation of at least one television program for a viewer, the method comprising:

using the viewer's (4/1-2) television program recommender (100) to access a plurality of user's (4/1-2) recommenders (101) at locations remote from that at which the viewer (4/1-2) is located;

using the viewer's recommender (100) to communicate with a selection of the user's recommenders (101) to generate data representing, at least one of a negative and positive example feedback (4/12-13) from one or more selected other users recommenders (101) to be received; and

determining a recommendation (106) for at least one television program to be watched in the future by the viewer based on at least one of the received negative and positive examples feedback (4/12-13);

said determination of the recommendation being performed at the viewer location utilizing a processor (106) provided as part of the viewer's television program recommender (100).

VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The sole issue is whether claims 1-4 and 6-15 are anticipated within the meaning of 35 U.S.C. § 102(e) by Applicant's common assignee case, Schaffer et al. Publication No. 2006/0026642 A1.

VII. ARGUMENT

- 1. The Examiner's broadest construction rubric cannot be used to "make up" for lack of teachings in the art.**

At pages 8 and 9 of the Final Rejection dated March 4, 2010, the Examiner flatly "respectfully disagrees" with Applicant's arguments concerning the true teachings of the Schaffer reference. In response the Examiner alleges (Final Rejection, March 4, 2010) page 9, paragraph 4, since Applicant has not defined "a viewers recommendation system", the Examiner has "full latitude to interpret each claim in the broadest reasonable sense" (citing in re Morris, 127 F.3d 1048). But more apropos is the Federal Circuit's recent case of April 14, 2010, in re Suitco Surface Inc., 94 U.S.P.Q.2d 1640 at 1644:

"The broadest-construction rubric coupled with the term "comprising" does not give the PTO an unfettered license to interpret claims to embrace anything remotely related to the claimed invention. Rather, claims should always be

read in light of the specification and teachings in the underlying patent. See *Schriber-Schroth Co. v. Cleveland Trust Co.*, 311 U.S. 211, 217 (1940).

Put simply it is absurd to argue that the Schaffer audience predictor, in whichever embodiment of it, be interpreted the same as the Applicant's viewer recommendation system. Further it is noted that "viewer" is defined in Applicant's own specification at page 4 line 1-2, "viewer" shall mean person for whom the video content is being recommended. Simply put Schaffer does not relate to collaborative sampling for use in a viewer's recommender system; but rather to use Schaffer's own words, is a method "for predicting a level of interest in an item, such as the size of an audience for a television program". Picking audience size for the benefit of advertising charges has nothing whatsoever to do with the television recommender selection for a viewer.

2. The requirements for a *prima facie* case of anticipation

A *prima facie* case of anticipation is established when the examiner provides:

1. a single reference
2. that teaches or enables
3. each of the claimed elements (arranged as in the claim)
4. expressly or inherently
5. as interpreted by one of ordinary skill in the art.

(Donnor Patent Prosecution, Second Edition page 415).

Using the well established criteria of a *prima facie* case of anticipation as above defined, the Schaffer reference fails in every respect for claim 1, and all of the dependent claims as well. (see below).

3. Schaffer which is commonly owned has NOTHING to do with the claimed invention

Schaffer's objective is to solve the need for a method and apparatus for predicting a level of interest in an item such as the size of an audience for a television program and to then predicting the level of interest in an item such as a television program based on the extent to which the item is recommended to potential users [0007]. Simply, it's an audience predictor [0025]. Using the language of Applicants' claim 1, Schaffer never provides: determining a recommendation for at least one television program to be watched in the future by the viewer based on at least one of the received negative and positive example feedbacks; and it does not provide a determination of recommendation for a viewer's processor that is a part of the viewer's television program recommender based upon other user's television program recommenders. These claim elements are simply missing from Schaffer (anywhere); it therefore it cannot create *prima facie* case of anticipation since it does not teach in a single reference the elements of the claim arranged as in the claim, see Donnor, Id.

4. The specifics of Schaffer's deficiencies are numerous

Schaffer teaches a method of predicting the size of an audience, based on analysing recommendation data collected from multiple users (paragraph 8 lines 1-5). These predictions can be employed by broadcasters or advertisers to adjust the price or content of

advertising (paragraphs 10, 21). No recommendations for television programs are generated for individual users from the analysed data.

In contrast, the present claims are directed to the invention of generating a recommendation for a particular individual user based on recommendation data obtained from other users.

The examiner states in the final rejection on page 8 paragraphs 1-2 that Schaffer discloses the limitation of ‘using the data from a number of users apparatus, to provide a recommendation of a particular program’, based on his citation of Schaffer, paragraphs 22 and 26. However, what these paragraphs actually teach is that the audience predictor collates program recommendation data from multiple users to predict the size of the audience. They certainly do not teach or suggest that the audience predictor provides program recommendations back to users individually. As such, Schaffer does not teach that a recommendation for a program is generated based on feedback from other users’ T.V. recommenders.

In addition the examiner states on page 8 of the final rejection, paragraphs 3-4 that Schaffer discloses the limitation: ‘using the data which is collected from the number of users apparatus, to provide any form of service or benefit to a particular viewer’, based on Schaffer paragraphs 21, 31, and 36. However, what these paragraphs actually teach is that program recommendations are generated for each user (paragraph 31); the service provider collects this data (paragraph 21) and the data is analysed by the audience predictor (paragraph 36). The program recommendations for each user are therefore generated independently of other

users, and again there is no disclosure of a recommendation for a program being generated based on feedback from other users' recommenders.

Furthermore the examiner states on page 9 of the final rejection, paragraphs 1-2 that Schaffer discloses the limitation 'the analysis of the data which is obtained from the users, being undertaken by apparatus of a particular viewer', based on Schaffer paragraph 29. However, what this paragraph actually discloses is that the audience predictor processes the data collected from multiple users to predict the size of an audience, and is silent as to where this apparatus is located. However, according to Schaffer paragraph 25 the audience predictor is associated with the central server of a service provider, and therefore the analysis is not undertaken by the recommender of a particular viewer.

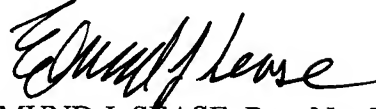
Given these differences it is legally impossible for Schaffer to anticipate. Even using the broadest language rubric, the limits of claim 1 are not present.

VIII. CONCLUSION

For the above-stated reasons, it is submitted that the claims are in a condition for allowability. The decision of the Examiner, therefore, should be reversed and the case allowed.

Please charge Deposit Account No. 26-0084 the amount of \$540.00 for the Appeal Brief. No other fees or extensions of time are believed to be due in connection with this brief; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account No. 26-0084.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Edmund J. Sease". The signature is fluid and cursive, with the first name "Edmund" being more prominent than the last name "Sease".

EDMUND J. SEASE, Reg. No. 24,741

McKEE, VOORHEES & SEASE

Attorneys of Record

CUSTOMER NO. 22885

801 Grand - Suite 3200
Des Moines, Iowa 50309-2721
515-288-3667

IX. APPENDIX - CLAIMS

Claim 1. A method for generating a recommendation of at least one television program for a viewer, the method comprising:

using the viewer's television program recommender to access a plurality of user's

recommenders at locations remote from that at which the viewer is located;

using the viewer's recommender to communicate with a selection of the user's recommenders

to generate data representing, at least one of a negative and positive example

feedback from one or more selected other users recommenders to be received; and

determining a recommendation for at least one television program to be watched in the future

by the viewer based on at least one of the received negative and positive examples

feedback;

said determination of the recommendation being performed at the viewer location utilizing a

processor provided as part of the viewer's television program recommender.

Claim 2. The method of claim 1, further comprising generating a user profile for the user based on previous behavior of the user, wherein the determining comprises determining the recommendation based on the negative example and the user profile.

Claim 3. The method of claim 2, wherein the generating of the user profile comprises generating an implicit user profile.

Claim 4. The method of claim 1, wherein the determining comprises determining the recommendation based on the negative and positive examples.

Claim 6. The method of claim 1, further comprising: mapping the negative example to an electronic program guide database of the user; and determining an equivalent negative example for the user from the electronic program database.

Claim 7. The method of claim 1, further comprising: mapping the positive example to an electronic program guide database of the user; and determining an equivalent positive example for the user from the electronic program database.

Claim 8. The method of claim 1, further comprising determining the one or more other users.

Claim 9. The method of claim 8, wherein the determining comprises selecting the one or more other users based on geographical location of the one or more other users.

Claim 10. The method of claim 8, wherein the determining comprises selecting the one or more other users based on a similarity of likes and/or dislikes with the one or more other users.

Claim 11. The method of claim 8, wherein the determining comprises selecting the one or more other users by the user.

Claim 12. The method of claim 11, wherein the selecting comprises: presenting a plurality of other users to the user; and the user selecting from among the plurality of other users to determine the one or more other users.

Claim 13. The method of claim 12, wherein the presenting comprises presenting the plurality of users based on geographical location of the one or more other users.

Claim 14. The method of claim 12, wherein the presenting comprises presenting the plurality of users based on a similarity of likes and/or dislikes of the one or more other users.

Claim 15. The method of claim 8, wherein the selecting comprises the user indicating the one or more other users.

X. EVIDENCE APPENDIX

None

XI. RELATED PROCEEDING APPENDIX

None